WILLS—CONSTRUCTION—GIFT TO WIFE "DURING HER WIDOWHOOD"—BIGAMOUS MARRIAGE—CONDITION—DEFINITION OF PERIOD—KNOWLEDGE OF PARTIES. —The plaintiff's husband disappeared and was supposed to be drowned. Nine years later she went through a formal marriage ceremony with the testator who was well aware of the previous marriage and the risk of the first husband being still alive, but considered their marriage perfectly valid. In 1906 the testator died leaving to his wife his household effects "during her widowhood, and after her decease or second marriage" he gave them to his daughters. She lived in the house and received the benefit of this and other property given her upon similar terms till 1910 when her former husband was proved to be living. This action was brought for a declaration that she was entitled to the property left her as the wife of testator during widowhood. *Held,* that the words "during her widowhood" did not import a condition and that the plaintiff was entitled to enjoy the property until she died or married again. *In re Hammond. Burniston* v. *White* [1911] 2 Ch. 342.

A testator is not restricted to the exact or primary meaning of the words or phrases used in a will. Evidence of a secondary meaning is admissible. *In re Wagstaff. Wagstaff* v. *Jalland* [1907] 2 Ch. 35, and [1908] 1 Ch. 162. The word "wife" may be so used to describe the beneficiary though in fact she be not legally married. *In re Lowe* (1892) 61 L. J. (Ch.) 415. When the wife is so indicated her rights are unaffected by subsequent divorce, *Bullock* v. *Zilley,* 1 N. J. Eq. 489, 492, even if the divorce has been obtained against her on the ground of adultery. *Carter* v. *Mutual Life Ins. Co.,* 10 Hawaii 117, 121. Other cases hold that the word "wife" does not necessarily import a condition which must be fulfilled in order to sustain the bequest. *Pastene* v. *Bonini,* 166 Mass .85, where a first wife attempted to intervene; *Dicke* v. *Wagner and another,* 95 Wis. 260, where dower was allowed the supposed wife on the expressed intention of testator that it shall not be interfered with because of another bequest. See further *Lepine* v. *Bean* (1870) L. R. 10 Eq. 160, *Anderson* v. *Berkley* [1902] 1 Ch. 936. The reference to the beneficiary as his wife being descriptive in its nature and valid, the court then had to construe the words "during widowhood" and consider whether or not under the circumstances they were intended as conditional and so necessitating a literal fulfillment of their terms. A case of the same nature is *In re Boddington* (1884) 25 Ch. D. 685. There testator left an annuity to "my said wife, so long as she shall continue my widow and unmarried." The Lord Chancellor on appeal held that the word "widow" must be regarded as the principal word and importing an absolute condition. The court here refused to follow this as a precedent on the ground that in the Boddington case all moral obligation of the testator to provide for his widow had been destroyed by her applying for and securing an annulment of the marriage, while in the present case the moral obligation of the testator "to provide for the lady" was strengthened by the marriage turning out invalid. Admitting the equity of this distinction, is it entirely convincing? In neither case was the woman to blame; see opinion of FRY, J., *In re Boddington,* 22 Ch. D. 597, 602. It is evident, in view of such a contrary construction of a similar phrase, that the court speculated on what the testator might have

desired. As this provision is used in conjunction with a condition against re-marriage, it is probable that testator in each case considered only the possibility of his wife marrying again. Suppose otherwise, that the testator carefully considered the wording of his will; then he would have made this provision with notice and knowledge of the constuction of the Boddington will and it might have been his intention *not* to support the plaintiff if another husband appeared. Under either supposition a dangerous precedent is established by disregarding the adjudicated construction of a common phrase upon the speculation of the court as to the moral duty of the testator.

WITNESSES—IMPRISONMENT BEFORE TRIAL WHEN UNABLE TO GIVE SECURITY FOR APPEARANCE—RIGHT TO COMPENSATION FOR PERIOD OF DETENTION.—Plaintiff was summoned to testify before a police court upon a complaint charging another with the illegal sale of intoxicating liquor. Probable cause being found, the case was put over until the next term of the superior court and the plaintiff was ordered to recognize with sureties for his appearance as a witness at that time. The plaintiff was a stranger and through no fault of his own was unable to furnish sureties. He was thereupon put into jail and detained for a period of eighty days at the end of which time he appeared, testified before the grand jury, and was discharged. The plaintiff filed a petition against the county for eighty days' witness fees and ten miles travel. *Held,* the plaintiff was "in attendance" upon the court for the period of detention in jail without his own fault so as to be entitled to recover witness fees therefor. *Kirke* v. *Strafford County* (N. H. 1911) 80 Atl. 1046.

Statutes in the majority of the States provide that a witness shall receive fees for such time as he is in attendance upon the court, but whether or not a witness who is imprisoned to insure his appearance is in attendance within the meaning of the statute during such period of detention is a question upon which the few authorities that can be found are in direct conflict. A precedent for the ruling in the case above is found in *Higginson's Case,* 1 Cranch. C. C. 73, Fed. Cas. No. 6471, decided in 1802. In this case the court allowed daily compensation to such a person for the whole time of imprisonment. This decision was approved and followed in *Latshaw's Case,* 1 Ohio Dec. (reprints) 96; *Robinson* v. *Chambers,* 94 Mich. 471. *State* v. *Stewart,* 1 Car. Law Repos. 524; *Hutchins* v. *State,* 8 Mo. 288, and *M'Fall's Case,* 2 Mart. O. S. 171 (La.), have been cited as supporting this doctrine, but the decisions in the first two of these cases were merely to the effect that a witness residing outside the State who has been compelled to enter into recognizance for his appearance will be allowed mileage from his place of residence, while *M'Fall's Case* decided that where a witness from another State was detained he should be entitled to fees for the period of his detention but not to mileage. In *Hall* v. *Somerset County,* 82 Md. 618, the court say that the detained witness is in attendance only in case the inability to give security is due to no fault on his part. On the other hand, in conflict with the above cases, it has been held that a witness who is confined to the county jail for failure to give security for his appearance cannot recover from the county his per diem as a witness for the time he was imprisoned. *Markwell* v. *Warren County,* 53